

**THE FIRM OF A.M.K.M.K. v. M. RM.
PERIYANAN CHETTIAR.**

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore), and Pretheroe, J.)
August 16, 1952]

[Penang — Civil Appeal No. 51 of 1951]

Debtor and Creditor (Occupation Period) Ordinance, 1948, s. 8 — Payments and withdrawals made during occupation — Credit balance offsets pre-occupation debts.

The appellants' claim in this case was for a debt outstanding on the 15th February 1942. At the trial, Abbott, J. dismissed the claim on the ground that section 4(1) of the Ordinance applied and that the debt was partially and substantially discharged at a time when the currencies stood at par. Against this decision (reported in (1951) M.L.J. 182) the appellants appealed.

Counsel for both parties agreed at the appeal that section 8 of the Ordinance applied. Counsel for the appellants argued that the accounts should fall into two separate parts, the dividing date being 15th February 1942, and that any credit balance during the occupation period could not be applied to the discharge of any pre-occupation debt.

Held, that (1) the purpose of the Ordinance was to provide a fair method of dealing with debts incurred before and during the occupation period as between debtor and creditor and that section 8 must be interpreted accordingly; (2) section 8 reverses the effect of the rule in *Clayton's Case*⁽¹⁾ with regard to payments and withdrawals during the occupation period, and that if after satisfying all occupation debts, a credit balance still remains, that balance should then be applied to discharge pre-occupation debts after taking into consideration sections 4(1) and 6 of the Ordinance.

Case referred to:—

- (1) *Clayton's Case* (1816), 1 Mer. 572; 15 R.R. 161.

COURT OF APPEAL.

R. Ramani and Lim Kheng Kooi for the appellants.
F. G. Pooley for the respondent.

Cur. Adv. Vult.

Mathew, C.J., (F.M.) : — The parties in this case are money-lenders, and they started dealing with each other at the beginning of 1939 on current account on terms that interest on the appropriate balances should be calculated and debited at the end of every six months period in such account in accordance with the usual Penang current account rate as fixed by Chettiar custom from time to time. The account was operated during the occupation period until August 1945. The plaintiffs-appellants' claim is for \$49,900 being the amount which the defendant was in debit on 15th February, 1942, the day from which the occupation period ran for the purposes of the Debtor and Creditor (Occupation Period) Ordinance, 1948.

The learned trial judge dismissed the suit in the following passage of his considered judgment:—

"I hold that the defendant's pre-occupation debt of \$49,900 was partially and substantially discharged at a time when the respective currencies stood at par and that the balance (representing four days of January 1943), though not discharged, is so trivial an amount that the doctrine of *de minimis non curat lex* must, and does, apply in respect of it. I give judgment for the defendant with costs."

On appeal, Counsel for the appellants and for the respondent agreed that the decision in this case must rest on the proper application of section 8 of the Debtor and Creditor (Occupation Period) Ordinance, 1948, and the appeal was argued on those lines.

Mr. Ramani, for the appellants, argued that the account must be regarded as falling into two separate and distinct parts, first that part of the accounts up to the 15th February, 1942, and second that part of the accounts which deals with the transactions which occurred during the occupation period. In no circumstances could any credit balance of the respondent during the occupation period be applied in reducing the pre-occupation debt. This argument, if successful, means that the appellants find themselves in the happy position of being owed \$49,900 in respect of the pre-occupation debt and with no debt to discharge in respect of the occupation transactions.

I would make one general observation. The purpose of the Debtor and Creditor (Occupation Period) Ordinance, 1948, is to provide a method of dealing with debts incurred before and during the occupation which operates fairly as between debtor and creditor. I would find it difficult to place an interpretation on section 8 which would have the effect of defeating the clear purpose of the Ordinance.

Section 8 of the Ordinance provides: (a) that any payment into an account during the occupation period shall be deemed to have been applied first to any debit-balance which arose during the occupation period, and (b) any withdrawal made from an account during the occupation period shall be deemed to have been applied first against any credit-balance which arose during the occupation period.

This provision has the effect of reversing what is known as the rule in *Clayton's Case*⁽¹⁾ as regards the application of certain payments and withdrawals made in an account during the occupation period. But section 8 has to be read in conjunction with the other provisions of the Ordinance and is complementary to those other provisions. The question to be decided is, in my opinion, determined by the manner in which the payment of \$700 on the 20th February 1942 should be treated. Under section 8(a) this payment of \$700 is deemed to have been applied first to any debit balance, or, part thereof, which arose during the occupation period and was *still* outstanding against

the respondent in the account at the time when the payment was made. On the 20th February 1942 there was no debit balance which arose during the occupation period and was *still* outstanding.

Mr. Ramani's contention that the \$700 must await the debit balance of \$800 which arose on the 13th March, appears to me to be in direct conflict with the express wording of the section. It seems clear to me that the effect of the payment of \$700 on the 20th February 1942 was to reduce the respondent's debit balance in the account to \$49,200. The effect of the withdrawal of the \$900 was to increase the respondent's debit balance to \$50,100 on the 13th March 1942, as there was no occupation period credit balance *still* outstanding at the time that the withdrawal of \$900 was made, the credit of \$700 having been already applied to the reduction of the balance of \$49,900. The proper application of the Ordinance to this account is that credits or debits are applied first to debit or credit occupation balances *still* outstanding at the date of payment or withdrawal and where there are none to the pre-occupation balance of the account.

Applying this method to the account, there was on the 31st December, 1942, when Malayan and occupation currency ceased to be at parity, a credit balance of \$1,650 in favour of the appellants. After this date further transactions took place but, applying the provisions relating to re-valuation, the respondent's pre-occupation debt was completely liquidated. In my view nothing is owing by the respondent to the appellants, and I would dismiss this appeal with costs here and in the Court below. The sum of \$500 deposited in Court by the appellants will be paid to the respondent against his costs.

Sir Charles Murray-Aynsley, C.J., (Singapore):

— I have had the advantage of reading the judgments of the other members of the Court and I agree that whatever interpretation can reasonably be put on section 8 the appeal should be dismissed. I feel, however, that the section is very obscure and might give rise to many difficulties. Fortunately its effect will be exhausted very soon.

Pretheroe, J.: — The parties in this case are money-lenders who for some years prior to, and throughout, the Japanese occupation of Malaya worked in very close association with each other. They operated from the same business address and it was almost a daily occurrence for them either to draw a cheque on the other's account or to endorse a cheque to the credit of the other party. It appears that when a loan was made to a client a cheque was drawn on the account of the party whose bank account was in

the most prosperous condition on that particular day and when a loan was repaid by a client it was credited to the party whose account that day was most in need of support.

The plaintiffs' claim was for the sum of \$49,900 being the balance of monies payable between the defendant and the plaintiffs due on a current account commencing "from a date long anterior to the 15th February, 1942" and ending on the 6th of August, 1945, and "ascertained in accordance with the provisions of section 8 of the Debtor and Creditor (Occupation Period) Ordinance, 1948" (hereinafter referred to as the 'Ordinance'). The defence was that the sum claimed had been repaid in full and consequently the defendant was not liable for the sum claimed or for any other sum.

When the case came up for hearing no witnesses were called by either party but an agreed bundle of documents was put in evidence. These documents show that a continuous account of the transactions between the parties was kept by each of them and their respective accounts are in complete agreement. There was thus no dispute concerning the facts.

At the trial the main point argued by counsel was whether or not the provisions of section 8 of the Ordinance should be applied to ascertain the true position of the parties.

In a considered judgment the learned trial Judge held that section 4(1) of the Ordinance applied, and not section 8, and that the defendant's pre-occupation debt was partially and substantially discharged at a time when the Malayan and occupation currencies stood at par and that the balance not discharged at that time was so trivial that the doctrine of *de minimis non curat lex* applied to it. Thus the learned trial Judge gave judgment for the defendant with costs and from that decision the plaintiffs appealed.

In the Appeal Court the defendant-respondent was represented by Mr. Pooley, who had not appeared in the lower Court, and counsel on both sides now agreed that the provisions of section 8 of the Ordinance must be applied to determine the issue in this case. With respect to the learned trial Judge I agree that this is the case as the accounts as between the two parties are accounts of the kind which section 8 of the Ordinance was designed to control. It is a coincidence that in this case the application of section 8, as I interpret the provisions of that section, produces the same result as that arrived at by the learned trial Judge but in the majority of cases of this nature the results would be very different.

At the hearing of the appeal the whole of the argument was directed to the manner in which section

8 should be applied. No precedent was cited to us and I have been unable to find one. So the point may well be a novel one.

On behalf of the appellants Mr. Ramani suggested that, as section 8 of the Ordinance is applicable only to transactions made during the occupation period, two lines should be ruled across the accounts: one should be placed immediately after the last item relating to the 15th February, 1942, and the second under the last entry made before the 5th September, 1945, as there was no entry relating to that particular day itself. It was common ground that at the point where the first line was drawn the appellants had a credit balance of \$49,900. Mr. Ramani then submitted that every credit item must be set against the most recent debit item and, if any balance then remains, against the next most recent, and so on. I agree with this procedure, but he then went further and submitted that in no circumstances should any credit balance of the respondent's during the occupation period ever be appropriated to reduce the appellants' pre-occupation balance. In the circumstances of this case this latter submission is the crucial point upon which the final decision depends. By the adoption of this "water-tight compartment" method of computing the respondent finds himself with a substantial sum standing to his credit when the second line across the ledger is reached. As this amount was an occupation debt Mr. Ramani submitted that it must be re-valued under section 6 of the Ordinance. By virtue of paragraph (a) of that section this procedure completely liquidates the respondent's credit balance and the appellants are left with their pre-occupation credit of \$49,900 untouched.

Mr. Pooley, for the respondent, disagreed with Mr. Ramani's interpretation of section 8 but as his submissions coincide with the view I have formed I need not set them out here.

In my view the latter part of Mr. Ramani's submission that occupation credits and debits must be set off against each other and can in no circumstances be used to reduce the pre-occupation credit balance cannot be sustained. The point arises in connection with the very first entry made in the accounts after the beginning of the occupation period for, on the 20th February, 1942, the respondent was credited with the sum of \$700. There was no occupation period debit balance to which it could be applied, so Mr. Ramani argued that the item must await the first entry of such debit balance: he was emphatic that it must not be set off against the pre-occupation balance. In my opinion this submission is based on a wrong construction of section 8 of the Ordinance. In the

first place the intention of the Legislature must be considered. In the absence of the section a legal presumption, which is conveniently known as the rule in *Clayton's Case*⁽¹⁾, would have applied. By that rule, when a debtor, who owes more than one debt to the same creditor, makes a payment to that creditor and does not indicate to which debt it shall be applied, it shall be applied to the debt which was first incurred. This procedure would have been most inequitable in respect of the occupation period during which the value of the currency declined at an ever increasing rate. So section 8 displaces that legal presumption and substitutes a statutory direction which reverses the order of application of payments. But it must be noted that the section applies exclusively to payments and withdrawals made during the occupation period. In other words the rule in *Clayton's Case*⁽¹⁾ was reversed by the section in respect of the occupation period only and the rule still remains valid in respect of payments and withdrawals made before and after that period. Section 4 of the Ordinance recognises, and regulates, the discharge of pre-occupation debts during the occupation period and there is no provision that section 8 provides any exception to the general procedure and Mr. Ramani's eloquence failed to persuade me that such an exception must necessarily be inferred. Again, the wording of the Ordinance is against Mr. Ramani. If his submission be correct then either section 4 would provide:—

"Subject to the provisions of sub-section (2) of this section and section 8 of this Ordinance.

or section 8 itself would read:—

"For the purposes of this Ordinance, *anything contained in section 4 to the contrary notwithstanding*—"

But the words in italics do not appear and this oversight must not be attributed to the Legislature if any other reasonable interpretation is available. And lastly, I consider Mr. Ramani's interpretation to be wrong because it would in many cases produce gross injustice which are avoided by an alternative interpretation. Thus if a debtor during the occupation paid a pre-occupation debt in full before the 1st January, 1943, up to which date the Ordinance itself recognises Malayan currency and occupation currency to have been at parity, he might well have to pay the debt in full a second time after the commencement of the Ordinance. For all practical purposes that is the situation in this case if the appellants win their appeal. For these reasons I am of opinion that Mr. Ramani's construction of the section is faulty.

In my opinion the correct interpretation of the section may be summarised as follows:—

(a) When, during the occupation period, a pre-occupation debtor had a sum credited to his account

by his pre-occupation creditor, such credit balance must first be applied to the most recent occupation period debt;

(b) if after the liquidation of the most recent occupation period debt there still remains a credit balance, such balance must be applied to the second most recent occupation period debt, and so on;

(c) if after satisfying all occupation period debts a credit balance still remains, that balance must be applied to any pre-occupation debts and the rule in *Clayton's Case* applies to such application;

(d) such credit balance will be reckoned at its face value if it appears in the accounts before the last day of December, 1942;

(e) if it appears in the accounts after the last day of December, 1942, such balance (but not the amount applied to liquidate the occupation period debts) must be re-valued in accordance with the Schedule to the Ordinance; and finally

(f) if any credit appears in the accounts after the 15th day of February, 1942, and there is at the time no occupation period debit balance, such sum must be applied to the pre-occupation balance.

Now, applying this procedure to the facts of the present case, it will be found that on the 31st December, 1942 (the date upon which Malayan currency and occupation currency ceased to be at parity) the appellants' pre-occupation credit balance of \$49,900 had been reduced to \$1,650. By the 7th January, 1943, further sums amounting to \$3,150 had been credited to respondent's account but there had been no more debit entries. When re-valued these latter credits were far more than required to complete the liquidation of the whole pre-occupation period credit. From the 7th January, 1943, onwards the parties alternated as creditors and on the 6th August, 1945, (the date mentioned in the statement of claim) there was a small balance standing to the credit of the appellants. This balance does not appear in the accounts as exhibited: it only emerges after applying the procedure I have attempted to summarise above. That balance, however, was an occupation period debt and falls to be re-valued under section 6 of the Ordinance and is thereby extinguished by virtue of the provisions of paragraph (a) thereof. It follows that no part of the amount claimed by appellants remains due. Thus, though for different reasons, I arrive at the same conclusion as the learned trial Judge.

In my opinion this appeal should be dismissed and respondent should have his costs in this Court and in the Court below. The sum of \$500 deposited in

Court by appellants should be paid out to respondent against his costs.

Appeal dismissed.

THE FIRM OF T.A.R.C.T. v. THE FIRM OF S.V.K.R.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore), and Pretheroe, J.)
August 16, 1952]

[Penang — Civil Appeal No. 60 of 1952]

Agency—Contract—Money borrowed on Thavanai letters—Discharge of debt by payment to ostensible agent.

In 1941 the respondents approached a chettiar firm O.R.M. for a loan of \$5,000. A cheque for \$5,000 from the appellants was given to the respondents and the respondents gave two Thavanai letters one of them for \$3,000 in the name of the appellants. The agent of the appellant firm was one Arunasalam Chettiar, and that of O.R.M. one Annamalai Chettiar. These two firms worked in close collaboration and they shared an office. On the 11th of December 1941 Arunasalam Chettiar was killed in an air raid and after his death Annamalai Chettiar carried on the joint business of the two firms until 1946 when he returned to India. In June 1943, the respondents paid to Annamalai Chettiar the principal and interest due in respect of the loan of \$3,000 and received back the Thavanai letter endorsed with a receipt signed by Annamalai Chettiar as agent of O.R.M. for the appellants.

The short point in the case was whether Annamalai Chettiar who was the agent of O.R.M. had authority to receive the money and give a receipt which was a valid discharge of the debt owing by the respondent firm. The learned trial Judge held that the respondents had made payment to an ostensible agent of the appellant firm who held the document and he dismissed the appellants' claim for recovery of the debt.

Held, on appeal (Sir Charles Murray-Aynsley, C.J. Singapore, dissenting), that on the facts Annamalai Chettiar was the ostensible agent of the appellants and therefore the payment to him instituted a valid discharge of the debt.

Cases referred to:—

- (1) *Barrett v. Deere M. & M.* 200; 173 E.R. 1131.
- (2) *Wilmot v. Smith M. & M.* 238; 173 E.R. 1144.

COURT OF APPEAL, appeal from the decision of Spenser Wilkinson, J., reported *ante*, p. 3.

F. G. Charlesworth for the appellants.

R. D. Hume for the respondents.

Cur. Adv. Vult.

Mathew, C.J., (F.M.) : — The main facts in this case present no difficulty. In 1941 the respondents approached a Chettiar Firm known as O. R.M. M. SP. SV. (hereinafter referred to as O. R.M.) for a loan of \$5,000. A cheque for \$5,000 from the appellants was given to the respondents, and the